**To: The UN Special Rapporteur on Summary, Extrajudicial and Arbitrary Executions**

**From:**

1. **Reprieve**

**(UK Registered Charity No. 1114900, ECOSOC Special Consultative Status 2018)**

1. **Advocacy Team for Victims of Tangerang Prison Fire (Tim Advokasi Kebakaran Korban Kebakaran LAPAS Tangerang (TAKK)), comprised of the following four organisations:**
   1. **Lembaga Bantuan Hukum Masyarakat (LBHM) (*Community Legal Aid Institute*)**
   2. **Lembaga Bantuan Hukum (LBH) Jakarta (*Legal Aid Institute Jakarta*)**
   3. **Imparsial (The Indonesian Human Rights Monitor)**
   4. **Lembaga Penyuluhan dan Bantuan Hukum Nahdlatul Ulama (LBHNU) (*Nahdlatul Ulama Legal Aid and Advice Institute*)**

[**RESPONSE TO CALL FOR INPUT: DEATHS IN CUSTODY**](https://www.ohchr.org/en/calls-for-input/2023/call-input-deaths-custody)

**FIRE AT TANGERANG PRISON, INDONESIA (8 SEPTEMBER 2021)**

# Introduction

1. We are writing in response to the call for input to inform the report on deaths in custody by the mandate of the Special Rapporteur on Summary, extrajudicial or arbitrary executions.[[1]](#footnote-0) This report outlines the details of a deadly fire which took place at Tangerang Prison, Banten, Indonesia, on 8 September 2021. The fire is a stark demonstration of the Indonesian Government’s failure to protect those in detention from the risk of death. It is a result of breaches of Indonesia’s obligations under both domestic and international law, and led to 49 prisoners’ deaths, and to prisoners’ suffering severe physical and psychological harm amounting to torture and/or ill treatment.

# Details on the fire at Tangerang Prison on 8 September 2021

## Background

1. At approximately 1:45 am on Wednesday 8 September 2021, a fire broke out in Block C of Tangerang Prison. This block housed prisoners jailed on drug charges. The fire began as most of the inmates were asleep. Guards were able to unlock some cells but had to retreat as the flames grew, leaving inmates trapped in their cells. The fire was extinguished at approximately 3:00am.[[2]](#footnote-1)
2. Investigators from the fire department indicated that they were looking at defective electrical wiring as the source of the fire.[[3]](#footnote-2) Based on their preliminary investigation, the Indonesian government has suggested that the cause of the fire was an electrical short-circuit. The Indonesian government admitted that no electrical wiring repair had been undertaken since the prison was built in 1972, despite a power upgrade.[[4]](#footnote-3)
3. In their investigation, Indonesian police stated that the cause of the fire was a short circuit from an electrical wire which was not properly installed by an inmate, who was ordered to do so by a prison officer. This inmate was not qualified to undertake such work.[[5]](#footnote-4)
4. The death toll from the fire stands at 49.[[6]](#footnote-5) In one case, the family of a prisoner who died in the fire reported that the prisoner sustained 98% burns and could not initially be identified by a forensic doctor.[[7]](#footnote-6)
5. Over 70 prisoners suffered injuries,[[8]](#footnote-7) and at least 8 prisoners suffered extremely serious injuries.[[9]](#footnote-8) Some inmates were so badly burnt that they could not be identified by sight and DNA testing had to be undertaken.[[10]](#footnote-9)
6. The maximum capacity of Tangerang Prison is 600 persons. The total number of inmates at the time of the fire was 2,072. The block most adversely affected was Block C, which housed 122 inmates. The maximum capacity of Block C is approximately 40 inmates.[[11]](#footnote-10)
7. As a result of their investigation, Indonesian police named six suspects as allegedly responsible for the fire. Five of these suspects are prison guards who were on duty when the fire occurred, and the sixth is the inmate who installed the wiring at Block C on the order of a prison officer.[[12]](#footnote-11) Of these six suspects, the Tangerang District Prosecutor has pressed charges against four of the prison guards for their role in the fire. These individuals were merely guards on duty when the fire occurred, and held no responsibility for the institutional management or security of Tangerang Prison.

## Details of human rights violations leading to deaths in custody

1. Indonesia has failed to abide by its obligations under both domestic and international law to comply with the prohibition on ill-treatment and ensure the safety of prisoners at Tangerang Prison. In particular, Indonesia has failed to meet the following obligations:

*International law*

1. Indonesia has ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The UN Special Rapporteur on Torture has clarified that the prohibition on ill-treatment does not only cover intentional physical and/or mental ill-treatment that does not reach the level of torture, but also covers poor conditions of imprisonment regardless of whether these are imposed intentionally or purposefully.[[13]](#footnote-12) The prohibition on ill treatment also includes overcrowding.[[14]](#footnote-13)
2. Indonesia is also a party to the International Covenant on Civil and Political Rights (ICCPR) which provides at Article 10 that "*[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*"
3. The Indonesian Government should abide by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which were established by UN General Assembly Resolution 70/175. Rule 1 states that “*No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification*”; and that “*the safety and security of prisoners … shall be ensured at all times*”.
4. General Assembly Resolution 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted on 9 December 1988, states *inter alia* as follows:[[15]](#footnote-14)
   1. All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person (Principle1);
   2. No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment (Principle 6);
   3. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law (Principle 35(1)); and
   4. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle (Principle 35(2)).

*Domestic law*

1. Under domestic law, respect for prisoners’ human dignity and worth and their right to safe shelter, is enshrined in Article 5 of Indonesia’s Correctional Law Number 12 of the Year 1995.[[16]](#footnote-15) This provision also notes that “*losing their freedom is the only suffering to be borne by prisoners*”.[[17]](#footnote-16)
2. The Decree of the Director-General of Corrections of the Ministry of Law and Human Rights of Indonesia, number Pas-459.PK.01.04.01, year 2015, regarding the Standard of Enforcement of Security and Order in Prisons and Detention Centres, stipulates that in case of a fire, prisoners must be removed and relocated to a safe location.[[18]](#footnote-17)

*Physical and psychological harm sustained*

1. Indonesia’s failure to comply with its domestic and international obligations led to prisoners suffering severe physical and psychological harm amounting to torture and/or ill treatment as a result of the fire that broke out on 8 September 2021.
2. Prison overcrowding is a serious problem in Indonesia. Overcrowded conditions make it difficult for prison staff to safeguard prisoners and control the environment around them, including evacuating prisoners in cases of natural disasters or fires.[[19]](#footnote-18) At the time of the fire, Tangerang prison housed over three times more prisoners than its maximum capacity. Only 15 guards had been on duty for the entire prison, which housed 2,072 inmates at the time.
3. Inmates were trapped in their cells when the fire broke out, unable to escape to save themselves. Many died inside the cells before the guards were able to unlock the cells. Typically in Indonesian prisons, the keys for all cells in one block are held by the warden on duty for that block. According to the authorities, guards managed to open some of the cells, but were forced back by the flames and had to leave some prisoners in their cells.[[20]](#footnote-19) This suggests that there were insufficient numbers of officers on duty relative to inmates, and the disaster response measures in place at Tangerang Prison were plainly inadequate.
4. The Indonesian government has stated that the electrical wiring at Tangerang Prison has not been updated since it was built in 1972.[[21]](#footnote-20) There was also reportedly a shortage of fire extinguishers at the prison at the time the fire occurred.[[22]](#footnote-21)
5. As detailed above, the individuals who have been prosecuted for the fire are all prison guards who were on duty when the fire occurred. None of these individuals held responsibility for the institutional management or security of Tangerang Prison. In fact, as detailed above, the problems that caused the fire were systemic and long-standing in nature: severe overcrowding, insufficient numbers of prison staff, failure to adequately repair and update the prison’s electrical wiring, a lack of fire safety equipment, and inadequate safety and evacuation measures. It is clear that these were systemic issues arising from a failure in the management of the prison. Accordingly, those with institutional responsibility for Tangerang Prison must be held accountable for the failure to ensure the security and safety of prisoners. Yet it is only individuals at the prison guard level who have been targeted for prosecution.

# Conclusion and recommendations

1. Indonesia failed to prevent or mitigate systemic failings in management and security at Tangerang Prison, resulting in fatalities and injuries of inmates. This failure to ensure the safety and security of prisoners amounts to torture and/or ill treatment according to both domestic and international law.
2. We respectfully request that in his report, the Special Rapporteur on Summary, extrajudicial and arbitrary executions recommends as follows:
   1. That the Indonesian government ensure appropriate health care for all prisoners at Tangerang Prison, including but not limited to: treatment for injuries sustained during the fire and mental health care for psychological harm suffered as a result.
   2. In the interests of transparency, that the Indonesia government release the results of the investigation it has undertaken into the fire at Tangerang Prison, including but not limited to the following information: cause of the fire; results of the evaluation undertaken of the management system at Tangerang Prison, including identification of those with institutional responsibility for the security and safety of prisoners; and determination of the steps the authorities could have taken to prevent the occurrence of the fire.
   3. That the Indonesian government take immediate steps to improve prison conditions at Tangerang Prison in order to guarantee the safety and security of prisoners. This includes, but is not limited to, rectifying the problems of extreme overcrowding; inadequate ratios of prison staff to prisoners; lack of fire safety mechanisms and equipment; and failure to regularly review potential fire hazards such as outdated electric wiring and to undertake necessary repairs to prevent fires.
   4. That the Indonesian government provide compensation to the victims and the families of victims who have suffered harm as a result of the fire.

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1. Special Rapporteur on Extrajudicial, summary or arbitrary executions, ‘Call for input: Deaths in custody’ (*OHCHR,* February 2023) <<https://www.ohchr.org/en/calls-for-input/2023/call-input-deaths-custody>> [↑](#footnote-ref-0)
2. *See (a)* Kiki Siregar, *Indonesian prison fire: Distraught family members seek updates at crisis centre* (*CAN*, 8 September 2021) <<https://www.channelnewsasia.com/asia/indonesia-prison-fire-tangerang-banten-distraught-families-2163546>> last accessed 11 April 2022; *See* *(b)* News Desk, *Indonesian prison fire: Tangerang jail blaze kills 41 inmates* (*BBC News*, 8 September 2021)<<https://www.bbc.co.uk/news/world-asia-58483850>> last accessed 11 April 2022 [↑](#footnote-ref-1)
3. *See* News Desk, *Dozens killed in fire at overcrowded Indonesian prison* (*Al Jazeera*, 8 September 2021) <<https://www.aljazeera.com/news/2021/9/8/dozens-killed-as-fire-hits-indonesian-prison>> last accessed 11 April 2022 [↑](#footnote-ref-2)
4. Minister of Law and Human Rights Yasonna Laoly said this in a press conference: *See (a)* source cited *supra* note 1(b); *See (b)* Aisyah Llewellyn, *Why are Indonesian prisons so dangerous?* (*Al Jazeera,* 30 October 2021) <<https://www.aljazeera.com/news/2021/10/30/why-are-indonesian-prisons-so-dangerous>> last accessed 11 April 2022 [↑](#footnote-ref-3)
5. *See* M Julnis Firmansyah, *Police: Fire in Tangerang Prion Caused by Negligence* (*Tempo.Co*, 29 September 2021)<<https://en.tempo.co/read/1511790/police-fire-in-tangerang-prison-caused-by-negligence>> last accessed 11 April 2022 [↑](#footnote-ref-4)
6. *See* source cited *supra* note 3(b). [↑](#footnote-ref-5)
7. Information on file at LBHM. [↑](#footnote-ref-6)
8. *See* source cited *supra* note 2. [↑](#footnote-ref-7)
9. Lembaga Bantuan Hukum Masyaraka, ‘Press Release: Tangerang Prison Fire: The Government Must Be Responsible Before the Law’ (12 September 2021) <<https://lbhmasyarakat.org/rilis-pers-kebakaran-lapas-tangerang-pemerintah-harus-bertanggung-jawab-di-hadapan-hukum/>> last accessed 11 April 2022 [↑](#footnote-ref-8)
10. *See* source cited *supra* note 1(b); *See* source cited *supra* note 2. [↑](#footnote-ref-9)
11. *Ibid.* [↑](#footnote-ref-10)
12. Editorial Team, *Negligence Of Prisoner Allegedly Caused Tangerang Prison Fire* (*VOI*, 29 September 2021) <<https://voi.id/en/news/89664/negligence-of-prisoner-allegedly-caused-tangerang-prison-fire>> last accessed 11 April 2022 [↑](#footnote-ref-11)
13. For example, see *V. v. The United Kingdom* Application no. 24888/94 (ECHR, 16 December 1999), para. 71 [↑](#footnote-ref-12)
14. UNODC ‘Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (a/68/295)’ (2013) UN Doc UNODC/CCPCJ/EG/6/2013/INF/2, para 45: “conditions of detention [that] can amount to inhuman and degrading treatment.

    Overcrowding, lack of ventilation, poor sanitary conditions, prolonged isolation, the holding of suspects incommunicado, frequent transfers from one prison to another, the non-separation of different categories of prisoners, the holding of persons with disabilities in environments that include areas inaccessible to them and the holding of persons without means of communication could constitute or lead to cruel, inhuman or degrading

    treatment or torture.” [accessible at: <https://www.unodc.org/documents/justice-and-prison-reform/SPECIAL_RAPPORTEUR_EN.pdf>] [↑](#footnote-ref-13)
15. UNGA Res 43/173 (9 December 1988) [accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention?ControlMode=Edit&DisplayMode=Design#wp1025564>] [↑](#footnote-ref-14)
16. Correctional Law Number 12 of the Republic of Indonesia 1995, A. 5 [accessible at: <http://www.bphn.go.id/data/documents/95uu012.pdf>] [↑](#footnote-ref-15)
17. *Ibid.,* A. 5(f) [↑](#footnote-ref-16)
18. Decree of the Director-General of Corrections of the Ministry of Law and Human Rights of Indonesia, number Pas-459.PK.01.04.01, 2015, regarding the Standard of Enforcement of Security and Order in Prisons and Detention Centres, P. 15 [accessible at: <https://pdfcoffee.com/standar-penindakan-gangguan-kamtib-pdf-free.html>] [↑](#footnote-ref-17)
19. *See* source cited *supra* note 3(b). [↑](#footnote-ref-18)
20. *Ibid.* [↑](#footnote-ref-19)
21. *See* source cited *supra* note 1(b). [↑](#footnote-ref-20)
22. *See* source cited *supra* note 2. [↑](#footnote-ref-21)